

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPHINE ELVA MCKELLIPS,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM d/b/a ST.
ANTHONY HOSPITAL,

Defendant.

CASE NO.: 3:13-CV-05096 MJP

**PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR DAMAGES**

I. INTRODUCTION

1.1 Plaintiff Josephine Elva McKellips ("McKellips" or "Plaintiff") requests damages and attorneys' fees and costs for the wrongful conduct of Franciscan Health System d.b.a. St. Anthony Hospital ("Defendant" or "SAH"). Defendant terminated McKellips' employment for illegal and discriminatory reasons causing severe damages.

//

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over this action pursuant to RCW 49.60, and since some of the actions by Defendant alleged in this Complaint occurred in the State of Washington.

2.2 Venue is proper because the Defendant transacts business and has agents within King County and Washington State. The Plaintiff currently resides in San Diego, California.

III. PARTIES

3.1 Plaintiff is an individual residing in San Diego, California. Plaintiff was employed by Defendant in Pierce County, Washington during the relevant time period.

3.2 Defendant is a nonprofit organization, incorporated in the state of Washington. Defendant conducts business throughout King and Pierce Counties and Washington State.

IV. FACTS

4.1 McKellips was a key contributor of SAH's talented team. After joining the company in September of 2011, McKellips was recognized for her talents and initiatives. In fact, prior to reporting her pregnancy and disability, McKellips received superlative performance evaluations and was consistently lauded for her efforts.

4.2 McKellips became aware that she was pregnant in or around October 2011, shortly after starting her employment with SAH. At that time, McKellips did not immediately announce her pregnancy. McKellips wanted to wait and announce her

1 pregnancy when it was safe to do so. Thus, from October 2011 to January 2012, McKellips
2
3 continued to work and excel at SAH.
4

5
6 4.3 In January 2012, as McKellips began her second trimester, she informed her
7
8 supervisor, Lynn Barrett, that she was expecting a child. McKellips explained to Ms. Barrett
9
10 that her child would be due around mid July 2012. She also informed Ms. Barrett that the
11
12 pregnancy would not affect her work ethic. At that time, McKellips had a perfect
13
14 performance record.
15
16

17
18 4.5 In February 2012, McKellips' work schedule began to fluctuate, due to
19
20 changing department needs. As a result, McKellips morning clock-in times changed, as did
21
22 her offsite meeting times. McKellips was always willing to adjust her working hours and
23
24 conditions to meet SAH's needs; she never complained and never expected to receive special
25
26 treatment on account of her pregnancy.
27
28

29
30 4.6 As her pregnancy progressed, throughout March and April 2012, McKellips
31
32 began to experience great pain in her pelvis. The pain was so great at times that McKellips
33
34 was immobilized and unable to walk. As a result of this pain, McKellips had to pace herself
35
36 when she walked from the office parking lot into the office each day. The walk was so
37
38 considerable for McKellips that she often had to take breaks during the walk just to make it
39
40 into the office on time.
41
42
43
44
45
46
47

1 4.7 In April 2012, Ms. Barrett began to grow impatient with McKellips and her
2
3 pregnancy. On numerous occasions, Ms. Barrett urged Ms. McKellips to resign, told her that
4
5 “she should be at home with her other children”, and even offered to demote her to a part-
6
7 time position. On one specific occasion, Ms. Barrett actually gave McKellips a resignation
8
9 letter and asked her to simply “sign-it.” McKellips was always polite in refusing these
10
11 repeated, offensive, and illegal comments and requests. When it was clear to Ms. Barrett that
12
13 McKellips was not going to resign her position or voluntarily reduce her working hours, on
14
15 account of her pregnancy, Ms. Barrett decided to take matters into her own hands.
16
17

18
19 4.8 From March to May 2012, Ms. Barrett repeatedly chastised McKellips for
20
21 arriving to work 1-2 minutes late. Ms. Barrett was so determined to find a “legitimate
22
23 reason” to terminate McKellips’ employment that she retroactively wrote McKellips up for
24
25 alleged tardies. No other employee was subject to this type of treatment or retroactive
26
27 punishment.
28
29

30
31 4.9 Each time McKellips was hauled into Human Resources to answer to Ms.
32
33 Barrett’s frivolous tardy allegations, she reiterated to Ms. Barrett that policy was not being
34
35 applied to her the way it was to other employees. In fact, McKellips was being singled out
36
37 and treated differently because of her pregnancy.
38
39

40
41 4.10 Moreover, when McKellips tried to explain to Ms. Barrett that her few 1-2
42
43 minute tardies could be explained by her pregnancy complications, complications that
44
45 inflamed her pelvis and made it impossible for her to walk the lengthy distance to the
46
47

1 building each day at the same pace as her colleagues, Ms. Barrett appeared largely
2
3 disinterested.
4

5 4.11 While McKellips was able to arrive at work early, and start walking to the
6
7 building earlier, she simply could not get into the building as fast as the others when she was
8
9 returning from offsite meetings. Moreover, with her constant schedule changes, it was often
10
11 hard to predict how early she would have to arrive at work to make the walk, without
12
13 suffering additional injuries to her pelvis or in harming her unborn child.
14
15

16 4.12 McKellips even presented Ms. Barrett with a doctor's note, a note stating that
17
18 McKellips condition was so severe that she would be required to take maternity leave 2
19
20 months early and be accommodated in the interim to reduce pelvic inflammation. McKellips
21
22 pleaded with Ms. Barrett to allow her to park closer to the building, which would have helped
23
24 her make it into the building quicker and reduced the pelvic pain associated with lengthy
25
26 walking to and from the parking lot. Ms. Barrett unequivocally refused. Ms. Barrett told
27
28 McKellips that, "pain is a part of every pregnancy" and that if she had "suggestions" about
29
30 changes at work, she should "put them in the suggestion box."
31
32

33 4.13 Ms. Barrett's constant berating tone and discriminating demeanor towards
34
35 McKellips also began to affect the staff's tone and demeanor towards McKellips. McKellips
36
37 was told by colleagues that she "was a burden because of her pregnancy." She was also
38
39 repeatedly told that she should just quit her job and go home to her children. Throughout this
40
41 period, McKellips was made to suffer extreme physical and emotional distress.
42
43
44
45
46
47

4.14 On May 25, 2012, approximately five days before McKellips' doctor approved maternity leave was scheduled to start, SAH terminated McKellips.

4.15 Defendant failed to engage in any analysis as to whether the additional 1-2 minutes of walking to work or parking closer to the building to reduce walk time was a reasonable accommodation in light of McKellips severe pelvic inflammation and pregnancy complications.

V. CAUSES OF ACTION

5.1 Plaintiff realleges paragraphs 1.1 through 4.15 of the Complaint and hereby incorporates the same by reference.

5.2 The above facts state claims against Defendant for disability discrimination and failure to accommodate, in violation of RCW 49.60 *et. seq.*, the Washington Law Against Discrimination, and the Americans with Disabilities Act, 42 U.S. § 12101 *et seq.*

5.3 The above facts state claims against Defendant for gender and pregnancy discrimination, in violation of RCW 49.60 *et. seq.*, the Washington Law Against Discrimination, and Title VII of the 1964 Civil Rights Act, 42 U.S. 2000e *et. seq.*, (including the federal Pregnancy Discrimination Act, as it amended Title VII).

5.4 Defendant's conduct thereby entitles Plaintiff to compensatory and statutory damages including damages for lost pay and benefits, emotional distress, and attorneys' fees and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

VI. PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for relief as follows:

- A. Damages for back pay, front pay, lost benefits, and medical expenses in an amount to be proved at trial;
- B. Damages for loss of enjoyment of life, pain and suffering, mental anguish, emotional distress, and humiliation;
- C. Prejudgment interest in an amount to be proved at trial;
- D. Compensation for any tax penalty associated with a recovery;
- E. Reasonable attorneys' fees and costs;
- F. Statutory punitive damages; and
- G. Whatever further and additional relief the court shall deem just and equitable.

Respectfully submitted this 14th day of May, 2013.

HKM EMPLOYMENT ATTORNEYS PLLC

s/Daniel Kalish

DANIEL KALISH, WSBA #35815

s/Lisa Burke

LISA A. BURKE, WSBA #42859

HKM EMPLOYMENT ATTORNEYS PLLC

1325 Fourth Avenue, Suite 540

Seattle, WA 98101

Telephone: 206-838-2504

Fax: 206-260-3055

E-mail: dkalish@hkm.com

E-mail: lburke@hkm.com

Attorneys for Josephine Elva McKellips

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2013, I e-filed the foregoing document with the Clerk of the Court. I also served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of this same document:

Michael Maddon
Bennett Bigelow & Leedom, P.S.
601 Union St., Suite 1500
Seattle, WA 98101-1363
Tel: 206-622-5511
Email: mmadden@bblaw.com

____ Legal Courier
____ U.S. Mail (first-class, postage prepaid)
____ E-Mail
____ **X** Via ECF Filing

Karen R. Glickstein
Polsinelli Shughart PC
120 West 12th St., Suite 1600
Kansas City, MO 64105
Tel: 816-395-0638
Email: kglickstein@polsinelli.com
Attorney Pro Hac Vice

____ Legal Courier
____ U.S. Mail (first-class, postage prepaid)
____ **X** E-Mail
____ Via ECF Filing

Lynn Trevino-Legler
Polsinelli Shughart PC
120 West 12th St., Suite 1600
Kansas City, MO 64105
Tel: 816-360-4353
Email: ltrevinolegler@polsinelli.com
Attorney Pro Hac Vice

____ Legal Courier
____ U.S. Mail (first-class, postage prepaid)
____ **X** E-Mail
____ Via ECF Filing

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of May 2013, at Seattle, Washington.

s/Sasha Forbes
Sasha Forbes, legal assistant